P.R. No. 1441/06
Presented by Shri Ramkrishna Agrawal
dated 11/5/06

(1) 6

C. 2001

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 229 /2006

Single Bench

APPELLANT PLAINTIFF :- Ghasiram aged about 46 years, son of late Shri Balaram Sahu, resident of village Bhathalikala, Tahsil Mungeli, District Bilaspur [C.G.].

VERSUS

RESPONDENTS DEFENDANTS :-

1] Kachara Bai wife of Ramadhar Sahu, aged about 57 years, resident of village Dundukapa, Tahsil Mungeli, District Bilaspur [C.G.].

2] Ram Bai wife of Kangalu Sahu, resident of village Patera, Tahsil Lormi, District- Bilaspur.

3] Kaushilya Bai wife of Jalesh Sahu, resident of village Patharra, Tahsil Lormi, District Bilaspur [C.G.].

4] State of Chhattisgarh, through Collector, Bilaspur [C.G.].

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SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

and decree

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No. 229/06 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04.09.2006

Shri Ravindra Agrawal, learned counsel for the appellant.

Heard on admission.

The appellant/plaintiff has preferred the instant second appeal under Section 100 of the Code of Civil Procedure against the impugned judgment and decree dated 28.2.2006 passed by Additional District Judge, Mungeli, Distt-Bilaspur in Civil Appeal No. 12-A/05 whereby the learned Additional District Judge has confirmed the judgment and decree dated 22.3.2005 passed by the Civil Judge, Class-I, Mungeli in Civil Suit No. 73-A/01 in which the suit of the plaintiff for declaration that the plaintiff is exclusive owner and possession holder of the suit land, has been dismissed.

Learned counsel for the appellant submits that both the Courts below have dismissed the claim of the appellant by recording a finding that the Will dated 2.7.1980 executed by father of the appellant in favour of the appellant is a suspicious document. However, this finding has been arrived at by ignoring the fact that the Will in question was in fact a registered document though the same was registered after the death of the executor as per provisions of Section 41 of the Indian Registration Act

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 229/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and thus the Courts below have failed to appreciate the provisions of Section 41 of the Indian Registration Act which provides that the Will can be registered even after the death of executor under certain circumstances and therefore, the following substantial questions of law arise for adjudication of this appeal.

(1) "Whether the genuineness of the Will is effected when it is registered under section 41 of the Indian Registration Act, after death of its executor?

(2) "Whether the learned courts below has erred in not giving the benefit of succession when the suit is for declaration of title, though the pleadings are related to will-deed?.

I have perused the impugned judgment as also the judgment of the trial Court and the material available on record.

The learned trial Court while deciding issue Nos. 1 and 2 has recorded a finding that the fact that the property in question is the self acquired property of Kalpa has not been proved and similarly that Will in favour of the plaintiff by the deceased Kalpa with respect to the suit land.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 229/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has also not been proved. The Will in question has been held not proved on the ground that the plaintiff as also his witnesses have deposed the contrary facts in their statements on oath which renders the Will a suspicious document.

The above finding is based on proper appreciation of the evidence available on record and the Courts below after considering the discrepancies present in the depositions of the witnesses have arrived at a finding of fact that the appellant/plaintiff has failed to prove due execution of the Will in his favour. The concurrent finding recorded by both the Courts below regarding execution of Will, is a finding of fact and no substantial question of law is involved for adjudication of this appeal. Accordingly, the appeal being devoid of merits is liable to be dismissed at the motion stage itself and the same is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Khan